

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

FILED

JUL - 1 2010

CLERK, U.S. DISTRICT COURT
NORFOLK, VA

JIMMY EUGENE SIMONS,

Petitioner,

v.

ACTION NO. 2:10cv24

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions for unlawful use of tear gas and grand larceny on October 7, 1997, in the Circuit Court for York County, Virginia, as well as that Court's subsequent revocation of probation on that sentence.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed May 25, 2010, recommends dismissal of the petition. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On June 9, 2010 the Court received petitioner's Objections to the Report and Recommendation. The respondent filed no response to the objections and the time for responding has now expired.

The Court, having reviewed the record and examined the objections filed by petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions

objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed May 25, 2010.¹ It is, therefore, ORDERED that the petition be DENIED and DISMISSED. It is further ORDERED that respondent's Motion to Dismiss is GRANTED.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to petitioner and counsel of record for respondent.

/s/ 

JEROME B. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
July 1, 2010

¹ Following the issuance of the Report and Recommendation, the United States Supreme Court decided Holland v. Florida, --S. Ct.--, available at 2010 WL 2346549 (June 14, 2010), wherein the Court addressed the equitable tolling standard applicable in § 2254 cases. As noted on page five of the Report and Recommendation, here, petitioner does not argue that he is entitled to equitable tolling. However, out of an abundance of caution, this court has thoroughly reviewed Holland. The court finds that Holland has no practical impact on the accuracy of the thorough analysis set forth in the Report and Recommendation.